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FOURTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY
AGREED EQUITABLE PRINCIPLES AND RULES FOR
THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 25-29 September 2000
Item 6 (b) of the provisional agenda

LIVINGSTONE DECLARATION

The Regional Seminar on Competition Law and Policy for Southern and East African Countries, Livingstone (Zambia), 24-25 July 2000, held within the framework of the preparatory process for the Fourth Review Conference, pursuant to paragraph 6 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its second session,[1] adopted the Livingstone Declaration annexed hereto for submission to the Fourth Review Conference.

[1] Report of the Intergovernmental Group of Experts on Competition Law and Policy on its second session (TD/B/COM.2/19-TD/B/COM.2/CLP/14).

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LIVINGSTONE DECLARATION

1. The Regional Seminar on Competition Law and Policy for Southern and East African Countries was held in Livingstone (Zambia) from 24 to 25 July 2000 within the preparatory process for the Fourth United Nations Conference to Review all Aspects of the Set.

2. Concerned that globalization should be made both more efficient and more equitable, as called for by UNCTAD X in the Bangkok Declaration (paragraph 4 of document TD/387 of 18 February 2000), the Seminar fully supports the view that "in addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced cooperation in the fields of trade, investment, competition and finance ...".

3. During the debates and the exchange of experiences among participants, it emerged that while some developing countries in COMESA and SADC have newly adopted competition legislation, (4) others have older systems that need to be revised in order to improve their effectiveness. Other countries, which are in the majority (15), still have not adopted competition legislation, although most are aware of the issues and some have already prepared draft bills and are receiving technical assistance from UNCTAD and other international organizations. The COMESA Protocol provides in the Treaty a provision for community competition policy to which all members adhere.

4. The Seminar felt that COMESA and SADC members should adopt, improve and effectively enforce appropriate legislation and implement judicial and administrative procedures for the control of restrictive business practices.

5. The importance of cooperation in this respect and the necessity for international norms were underlined, in the formulation of national competition law and policy, while the core principles of competition law and policy as contained in the United Nations Set of Principles and Rules and the COMESA Treaty were recognized as having broad application. Competition legislation and its implementation needs to take into account each country's level of economic development, judicial system, social system and specific characteristics.

6. COMESA member States should base their legislation primarily on the principles contained in the COMESA Treaty Article 55 which aims at eliminating or effectively dealing with acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or restrict intra-COMESA and SADC trade.

7. In order to ensure the equitable application of the Set of Principles and Rules, and the formulation of future international agreements on competition policy, developed countries should take into account the development, financial and trade needs of developing countries for the purposes of promoting the establishment or development of domestic industries and encouraging their economic development through regional or subregional integration groupings among developing countries.

8. Although many COMESA member States are opening up their markets to competition and adopting competition legislation, there persist a number of serious competition problems in the COMESA market, including high levels of concentration and market dominance by a few leading players, weak competition in the import sector and fragile markets. It was felt that these factors pose serious risks to economic integration and liberalization in the region.

9. The Seminar was of the view that a soft and consensus-building approach to regional and international cooperation in the area of competition policy would contribute to a better understanding of the issues involved and may reinforce efforts at reaching international agreements in this area. In this connection, the meeting felt that the voluntary nature of the United Nations set of Multilaterally Agreed Equitable Principles and Rules and the long experience gained with its implementation provide a good basis for consultations and consensus-building on possible international agreements.

10. The importance of competition advocacy in COMESA was underlined with respect to government officials and administrations, as well as market actors including consumers and representatives of the private sector.

11. Accordingly, in line with the UNCTAD X Plan of Action on competition issues and considering the importance of competition policy for promoting economic development and economic welfare, the Seminar recommends that the Fourth Review Conference draw up a work plan along the following lines:

(a) **Assistance to COMESA:** UNCTAD should assist COMESA in the establishment of mechanisms for implementing the COMESA Treaty on competition policy through seminars, workshops, training and technical advice.

(b) In view of the fact that several countries are members of both COMESA and SADC, UNCTAD is called upon to assist the SADC member States in the establishment and enforcement of competition law and policy through seminars, training and legal advice.

(c) **Institutional capacity building:** UNCTAD should continue to provide and where possible expand, in collaboration with other international organizations active in this field, its technical assistance, advisory and training services. Participants at the Seminar called upon bilateral and multilateral donors to provide financial and human resources to UNCTAD's technical assistance programme on competition. With respect to priority areas, it emphasized the following specific needs: clarifying methodologies for defining relevant markets and assessing market power; continuing to improve model laws for developing and other countries, it being desirable that COMESA commence the implementation process by the year 2001.

(d) **Studies on constraints on competition:** UNCTAD should continue to study constraints on competition with particular emphasis on the constraints on international competitiveness; the treatment of parallel imports as an aspect of the application of competition policy in relation to IPRs; the benefits of competition law and policy for consumers; the link between competition policy and investment; the link between competition policy, privatization and development; the impact of international cartels on the development of developing countries.

(e) **Inputs to possible international agreements on competition:** UNCTAD should continue to provide inputs to deliberations on possible international agreements on competition, along the lines of paragraph 9 above, including with respect to the following items:

- Can the United Nations Set of Principles and Rules provide a basis for consensus-building in international cooperation in competition policy? If so, what measures need to be taken by UNCTAD to promote this objective?

- What are the various alternatives available for international cooperation in the area of competition policy?

- The complementarity of cooperation at bilateral, regional and multilateral levels;

- What provisions could be made for special and differential treatment of developing countries?

- What would the roles be of dispute-settlement alternative complaints mechanisms and progressivity in the enforcement of an international agreement?

12. In recognition of the need for the broader consultations within the region, SADC should be engaged to participate in the efforts and processes outlined in this Declaration.

Adopted by acclamation in Livingstone, Zambia,
26 July 2000